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Chief Justice Chase

SUPREME COURT OF THE UNITED STATES

No. ~~265.~~ ~~139.~~ 70.

PAUL QUEYROUZE, ON BEHALF OF EDWARD LAPLANTE, CLAIMANT OF THE CARGO OF THE SCHOONER JOSEPHINE, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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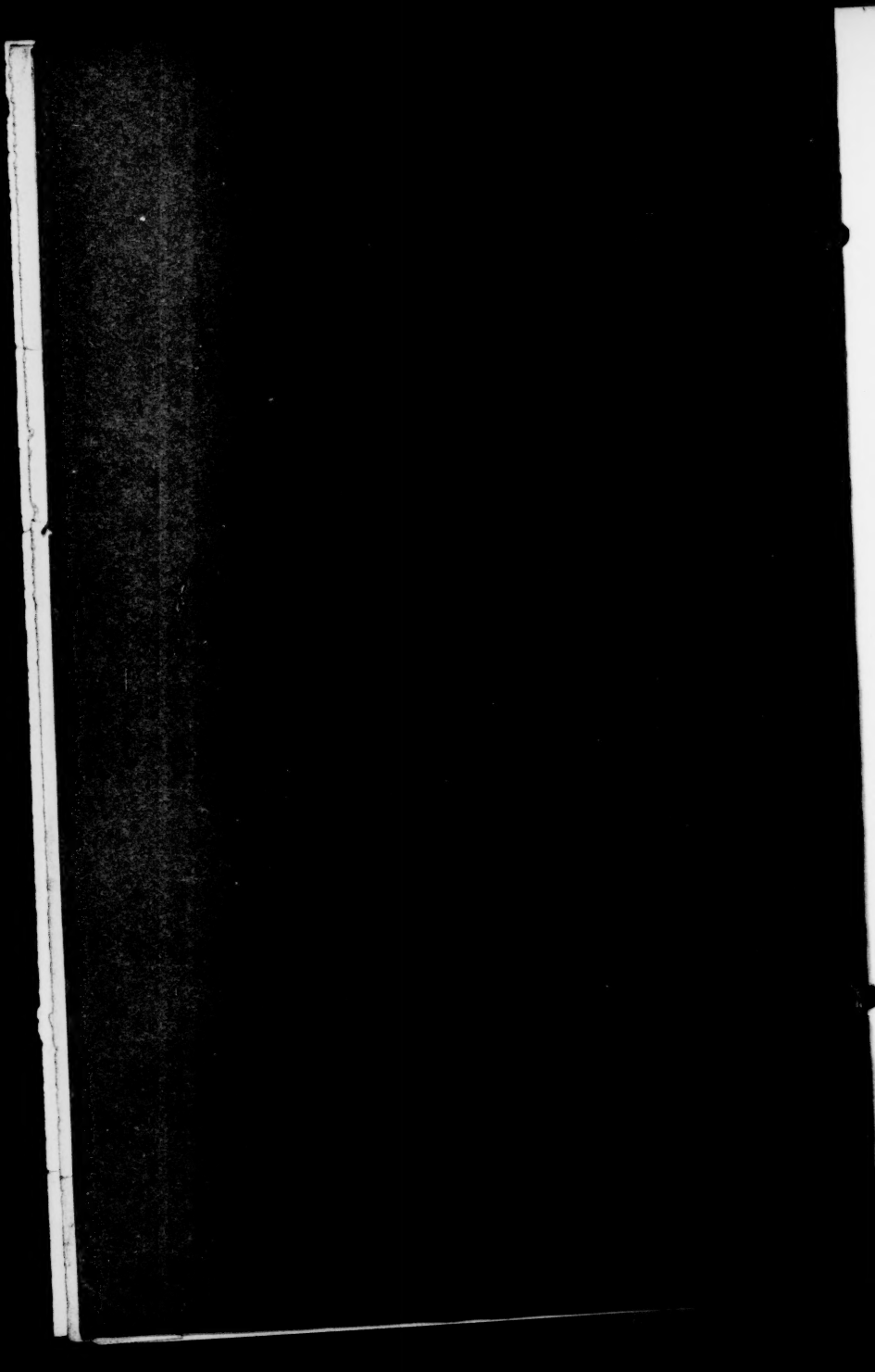

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vs.

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1 Pleas and proceedings before the honorable John Cadwalader, judge of the district court of the United States for the eastern district of Pennsylvania.

It is thus contained:

Be it remembered that on the fourth day of September, A. D. 1862, George A. Coffey, esquire, attorney of the United States for the said district, and prosecuting in their name and on their behalf, appears in said court, and presents the libel of the United States of America against the schooner Josephine and cargo, in a certain matter of prize, in the words following, to wit:

2 In the district court of the United States for the eastern district of Pennsylvania.

UNITED STATES *vs.* SCHOONER "JOSEPHINE," her tackle, apparel, and furniture, and the goods, wares, and merchandise laden thereon.	In admiralty.—Prize.

This fourth day of September, in the year 1862, George A. Coffey, attorney for the United States for the said district, who in this cause prosecutes on behalf of the said United States, by all lawful ways and means, and to all effects in law, alleges and propounds articulately, as follows, viz:

3 1. The inhabitants and authorities of the State of Louisiana, as well as of divers adjoining States, as well now as since the 12th day of April, 1861, have, and do oppose the laws of the United States, and obstruct the execution thereof by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by law; and since the said date have been and are in a state of insurrection, hostility, and war against the United States; and the President of the United States issued his proclamation on the 19th and 27th days of April, 1861, declaring a blockade of the ports of the said State of Louisiana and the said adjoining States, which blockade was then, and ever since has been, actually established and maintained.

2. That the said schooner Josephine, whereof Captain Cummins is master, her tackle, apparel, and furniture, and the goods, wares, and merchandise laden on board thereof, were on the 27th day of April, 1862, taken and seized on the high seas, off Ship's Shoal light-house, on the coast of the said State of Louisiana, by the United States steamer "Hatteras," under command of Captain Emmons, said steamer then and there being one of the Gulf squadron, under command of , blockading the ports and coast of Louisiana, and were brought into the port of Philadelphia, in this said district.

4 3. At the time of the aforesaid seizure, said schooner was on the high seas, off Ship's Shoal light-house, on the coast of the said State of Louisiana, and was violating or attempting or in-

tending to violate the blockade of a port or ports of the said State of Louisiana, or of a port or ports within the said adjoining States; that the said schooner, and the goods, wares, and merchandise laden on board thereof, were at the time of said seizure the property of enemies of the United States; and the said goods, wares, and merchandise, were contraband of war, and were intended for and capable of giving aid and comfort to the said insurgents, traitors, and enemies of the United States; and the said schooner, her goods, wares, and merchandise, as so doing, and being or otherwise are liable to confiscation and condemnation, and ought to be confiscated as lawful prize.

4. Due proof being made of all the premises, proponent prays right and justice to be effectually done in the premises, and that the usual process of monition and warrant of attachment in this behalf be issued; and that the said schooner, her tackle, apparel, and furniture, and the goods, wares, and merchandise laden on board thereof, and so as aforesaid seized and taken, be pronounced to have been violating said blockade, and the lawful regulations establishing it, and to be the property of insurgents, traitors, and enemies of the United States; to be contraband of war, and to be intended for and capable of giving aid and comfort to said insurgents and enemies of the United States; and as such, or otherwise, liable to confiscation and condemnation, and be condemned as lawful prize, as having been taken as aforesaid, to be disposed and distributed according to law.

GEORGE A. COFFEY, *U. S. Att'y.*

And thereupon, the court having considered the same, it is ordered and decreed that process of law do issue according to the prayer of the said libel; and said process, being issued, is in the words following, to wit:

UNITED STATES,
Eastern District of Pennsylvania, sct:

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

[SEAL.] Whereas the district court of the United States in and for the eastern district of Pennsylvania, rightly and duly proceeding on a libel filed in the name of the United States of America, hath decreed all persons in general who have, or pretend to have, any right, title, or interest in the schooner "Josephine," whereof Capt. Cummins is master, her tackle, apparel, and furniture, and the goods, wares, and merchandise laden on board thereof, taken and seized at sea, off Ship Shoal light-house, on the coast of the State of Louisiana, by the United States steamer "Hatteras," under command of Capt. Emmons, and brought into this port to be monished, cited, and called to judgment, at the time and place underwritten, and to the effect hereafter expressed, (justice so requiring:) You are therefore charged and strictly enjoined and commanded, that you omit not, but that by publishing these presents in at least two of the daily newspapers printed and published in the city of Philadelphia, and in the Legal Intelligencer, you do monish and cite, or cause to be monished

and cited, peremptorily, all persons in general who have, or pretend to have, any right, title, or interest in the said schooner "Josephine," her tackle, apparel, and furniture, and the said goods, wares, and merchandise laden on board thereof, to appear before the honorable John Cadwalader, the judge of the said court, at the district court-room, in the city of Philadelphia, on the twentieth day after publication of these presents, if it be a court day, or else on the next court day following between the usual hours of hearing causes, then and there to show, or allege, in due form of law, a reasonable and lawful excuse, if any they have, why the said schooner "Josephine," her tackle, apparel, and furniture, and the goods, wares, and merchandise laden on board thereof, should not be pronounced to belong, at the time of the capture of the same, to the enemies of the United States, and as goods of their enemies, or otherwise, liable and subject to condemnation, to be adjudged and condemned as good and lawful prizes; and further to do and receive in this behalf as to justice shall appertain. And that you duly intimate, or cause to be intimated, unto all persons aforesaid, generally, (to whom by the tenor of these presents it is also intimated,) that if they shall not appear at the time and place above mentioned, or appear and shall not show a reasonable and lawful cause to the contrary, then said district court doth intend and will proceed to adjudication on the said capture, and may pronounce that the said schooner "Josephine," her tackle, apparel, and furniture, and the goods, wares, and merchandise laden on board thereof, did belong, at the time of the capture of the same, to the enemies of the United States of America, and as goods of their enemies, or otherwise, liable and subject to confiscation and condemnation, to be adjudged and condemned as lawful prize, the absence or rather contumacy of the persons so cited and intimated in anywise notwithstanding. And that you duly certify to the said district court what you shall do in the premises, together with these presents.

Witness the honorable John Cadwalader, judge of the said court, at Philadelphia, this fourth day of September, A. D. 1862, and in the eighty-seventh year of the independence of the said United States.

CHARLES S. LINCOLN,
pro Cl'k Dist. C't U. S.

I, William Millward, U. S. marshal for the E. D. of Pennsylvania, do report and say, that I have executed the within monition, as I am commanded, by publishing the same in two or more newspapers published in the city of Philadelphia, on the eighth day of September, A. D. 1862. So answers

WILLIAM MILLWARD, *U. S. Marshal,*
Per THOS. B. PATTERSON, *D. Marshal.*

7 UNITED STATES,
Eastern District of Pennsylvania, sct:

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

[SEAL.] Whereas the district court of the United States in and for the eastern district of Pennsylvania, in a certain cause of

prize, moved and prosecuted in the said court, in the name of the United States of America against the schooner "Josephine," whereof Captain Cummins is master, her tackle, apparel, and furniture, and the goods, wares, and merchandise laden therein, captured by the United States steamer "Hatteras," under command of Capt. Emmons, as prize, and brought into the port of Philadelphia, in the eastern district of Pennsylvania, rightly and duly proceeding on the day of the date hereof, upon the libel filed on behalf of the United States by George A. Coffey, esq., attorney of the United States for said district, hath decreed the arrest of the said schooner, her tackle, apparel, and furniture, and the said goods, wares, and merchandise:

Thereupon we do hereby empower and strictly command you, that you omit not, but that you arrest, or cause to be arrested, the said schooner, her tackle, apparel, and furniture, and the said goods, wares, and merchandise, wheresoever you shall find the same, and the same so arrested you keep under safe and secure arrest until the further order of the said district court, and that you duly certify to the said district court what you shall do in the premises, together with these presents.

Witness the honorable John Cadwalader, judge of the said district court, at Philadelphia, the fourth day of September, in the year of our Lord one thousand eight hundred and sixty-two, and in the eighty-seventh year of the independence of the said United States.

CHARLES S. LINCOLN,
pro Cl'k Dist. C't U. S.

APRIL 9, 1862.

By virtue of the within writ I have arrested, seized, and attached the within named schooner Josephine, her tackle, &c., and the cargo laden on board, and have the same in my custody. So answers

WILLIAM MILLWARD, *U. S. Marshal,*
Per THOS. B. PATTERSON, *D. Marshal.*

8 And now, this fifth day of September, A. D. 1862, on motion of the attorney of the United States, proclamation is openly made, that if any one hath aught to say why the said schooner Josephine, her tackle, apparel and furniture, and the cargo laden on board thereof, should not be condemned, as forfeited for the causes in the said libel set forth and contained, he may appear, and he shall be heard. And no person thereupon appeared.

Afterwards, to wit, on the ninth day of September, A. D. 1862, the special report of the prize commissioner is presented, and is in the words following, to wit:

9 *To the honorable John Cadwalader, judge of the district court for the eastern dist. of Penn'a:*

The undersigned respectfully presents for consideration that the cargo of said brig Josephine having been discharged under order of court, dated 6th inst., was found to consist of 3,212 bales cotton and

a small quantity of staves, (used as dunnage.) About 75 bales of the cotton is a good deal damaged, (to the extent of 20 per cent.,) by the vessel leaking badly. The cotton has been stored, so that the custody thereof is well cared for.

The market value of cotton is at present higher than ever before known. It is for your honor to judge whether advantage should or should not be taken to profit thereby.

The vessel is very old, of but small value, and will require large outlay to render her seaworthy; the accumulating charges will rapidly deteriorate her value. The market for vessels has in all probability reached its maximum.

10 I respectfully recommend the early sale of the brig Josephine and cargo for benefit of all concerned.

Respectfully submitted.

JOHN H. YOUNG,
Prize Commissioner.

PHILAD'A, *Sept.* 8, 1862.

And now, 9 September, 1862, the foregoing report having been read in presence of the master of the captured vessel, who attended in pursuance of notice; and the attorney of the United States praying an order for the sale of the said vessel and her cargo; and the said master stating that he had nothing to say as to the vessel, but desired further time for consideration as to the cargo, the court order the sale of the said vessel as perishable for the reasons in the said report stated, and that the sale, when made, be reported to the court for confirmation, or other order, according to the course and practice of the court, and direct the case to stand over for future consideration as to the cargo.

Which said writ of sale being issued, is in the words following, to wit:

11 UNITED STATES,
Eastern district of Pennsylvania:

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

Whereas the district court of the United States for the eastern district of Pennsylvania, in a certain cause of prize moved and prosecuted in said court, at the suit of the United States of America, against the schooner Josephine, whereof Captain Cummins was master, her tackle, apparel and furniture, and the goods, wares, and merchandise laden on board the same, captured by the United States steamer "Hatteras," under command of Captain Emmons, and brought into the port of Philadelphia, in the said eastern district of Pennsylvania, rightly and duly proceeding on the day of the date hereof, on the application of the attorney of the United States as their proctor, has ordered that the said schooner Josephine, her hull, tackle, apparel and furniture, (justice so requiring,) be publicly sold by the marshal, according to the course and practice of the court: We do, therefore, by these presents, empower and strictly enjoin

and command you that you expose, or cause to be exposed, to public sale, the said schooner Josephine, her hull, tackle, apparel and furniture, and that you sell, or cause the same to be sold, publicly to the best bidder, having first given due notice of the time and place of sale, according to the course and practice aforesaid, and that you make report of the sale so to be made, and of your execution of this mandate, in the district court aforesaid, on the tenth day of October next, for confirmation or other order, according to the course and practice of the court.

Witness the honorable John Cadwalader, judge of the said court, at Philadelphia, this ninth day of September, A. D. 1862, [SEAL.] and in the eighty-seventh of the independence of the said United States.

CHARLES S. LINCOLN,
pro Cl'k Dis't C't U. S.

To the honorable John Cadwalader, judge of the district court of the United States:

In obedience to the within writ or order of sale, after giving at least ten days' notice in two or more daily newspapers published in the city of Philadelphia, to wit: in the Press and the Evening Bulletin, and in the Legal Intelligencer, also by hand-bills posted, of the time and place of sale, I did expose to sale, at public auction, at Callowhill st. wharf, on Wednesday, October 1st, 1862, at 12 o'clock m., the schooner Josephine, her tackle, &c., when Philip Fitzpatrick, of the city of Philadelphia, bought the same for the price or sum of sixteen hundred dollars, he being the highest and best bidder, that being the highest and best price bidden for the same, which said sale is reported for the confirmation of the court and for further action of the same.

So answers

WILLIAM MILLWARD,
U. S. Marshal,
Per THOS. B. PATTERSON,
D. Marshal.

12 And now, this twelfth day of September, A. D. 1862, on motion of the attorney of the United States, proclamation is again openly made, that if any one hath aught to say why the said schooner Josephine, her tackle, apparel, and furniture, and the cargo laden on board thereof, should not be condemned as forfeited for the causes in the said libel set forth and contained, he may appear, and he shall be heard. And no person thereupon appeared.

Afterwards, on the 19th day of September, A. D. 1862, on motion of the attorney of the United States, proclamation is again openly made, that if any one hath aught to say why the said schooner Josephine, her tackle, apparel, and furniture, and the cargo laden on board thereof, should not be condemned as forfeited, for the causes in the said libel set forth and contained, he may appear, and he shall be heard. And no person thereupon appeared.

13 And now, October 31st, 1862, the marshal of the United States and the prize commissioner, Captain John Young, suggest to the court that it would be for the interest of all concerned that the cargo of the said vessel, consisting of cotton, should be sold; and the attorney of the United States moving for an order of sale of the said cargo, John Cummins, the master of the captured vessel being present, is informed by the court that as the said cargo is not perishable, no order for the sale of it will be made, unless it be his desire that it should be sold; whereupon the said master states that he believes it is for the interest of all concerned, that the same should be sold, and that he desires an order for the sale thereof to be made.

The court thereupon, on the motion of the said attorney of the United States, order that the said cargo be sold by the marshal, according to the course of practice of this court, and that the proceeds be brought into the registry of the court to abide the further order and direction of the court.

Which writ being issued, is in the words following, to wit:

UNITED STATES,
Eastern district of Pennsylvania:

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

Whereas the district court of the United States for the eastern district of Pennsylvania, in a certain cause of prize moved and prosecuted in said court, at the suit of the United States of America, against the schooner Josephine, whereof Captain Cummings was master, her tackle, apparel, and furniture, and the goods, wares, and merchandise laden on board the same, captured by the United States steamer "Hatteras," under command of Capt. Emmons, and brought into the port of Philadelphia, in the said eastern district of Pennsylvania, rightly and duly proceeding on the day of the date hereof, on the application of the attorney of the United States as their proctor, has ordered that the cargo of the said schooner Josephine, (justice so requiring,) be publicly sold by the marshal according to the course and practice of the court: We do, therefore, by these presents, empower and strictly enjoin and command you that you expose, or cause to be exposed, to public sale, the cargo of the said schooner Josephine, and that you sell, or cause the same to be sold, publicly to the best bidder, having first given due notice of the time and place of sale according to the course and practice aforesaid, and that you make report of the sale so to be made, and of your execution of this mandate, in the district court aforesaid, on the twenty-eighth day of November next, and that when such sale shall have been confirmed by the court and executed, or sooner if the court shall so command, you bring the proceeds into the registry of the court, to abide its order and direction.

Witness the honorable John Cadwalader, judge of the said court, at Philadelphia, this thirty-first day of October, A. D. 1862, and in the eighty-seventh of the independence of the said United States.

[SEAL.]

CHAS. S. LINCOLN,
Pro Cl'k D. C. U. S.

To the honorable John Cadwalader, judge of the district court of the United States:

In obedience to the within writ or order of sale, after giving at least ten days' notice in two or more daily newspapers published in the city of Philadelphia, to wit: in the Press and the Evening Bulletin, and in the Legal Intelligencer, also by hand-bills posted, of the time and place of sale, I did expose to sale, at public auction, at Callowhill st. wharf, on Tuesday, November 11th, 1862, at 12 o'clock, m., the cargo of the schooner Josephine, and sold the same in the aggregate for the price or sum of ninety-one thousand four hundred and forty-three $\frac{15}{100}$ dollars, including a sale of October 1st, 1862, that being the highest and best price bidden for the same; the particulars of said sales are hereto annexed; which said sales are reported for the confirmation of the court and for its further order and direction.

So answers

WILLIAM MILLWARD,
U. S. Marshal,
Per THOS. B. PATTERSON,
D. Marshal.

15 SALES, OCTOBER 1ST, 1862.

Cargo Sch'r Josephine.

Staves, 1,385, $2	$27	70
21 fire brick, lot, 50		50
	28	20
	91,443	15

SALES, NOVEMBER 17TH, 1862.

Cargo of Sch'r Josephine.

10 bales of cotton,	4,190,	68	$2,849	20
150 " "	63,102,	"	42,909	36
50 " "	20,847,	67¾	14,123	84
10 " "	4,164,	67½	2,810	70
50 " "	20,999,	67	14,069	33
51 " "	21,165,	67¼	14,233	46
18 bags "	618,	60	370	80
Loose "	127,	38	48	26
			91,414	95

16 Afterwards, to wit, on the twentieth day of January, A. D. 1863, F. C. Brewster, esquire, a proctor and advocate of said

court, appears in said court and presents the claim of Paul Queyrouze, on behalf of Edward Laplante, and the same being read is in the words following, to wit:

In the district court of the United States in and for the eastern district of Pennsylvania.

THE UNITED STATES OF AMERICA
vs.
THE SCHOONER JOSEPHINE AND CARGO. } In admiralty.

Paul Queyrouze, in the name and on behalf of Edward Laplante, a subject of the emperor of France, resident in the city of Bordeaux, in France, sole and entire owner of the cargo of the said brigantine Josephine, (called in these proceedings the schooner Josephine,) and intervening for the interest of said Edward La Plante in said cargo, appears before this honorable court and makes claim to said cargo, consisting of three hundred and twenty-two bales of cotton and twelve hundred staves, to protect whose interest he now appears
17 and makes claim to said cotton and staves, constituting the said cargo, as the same are arrested by the marshal under process of this court, at the instance of the United States of America.

And said Paul Queyrouze avers that the said cargo, from the time of placing it on board said vessel, as hereinafter mentioned, was, and hence hath been, and still is, the property of the said Edward La Plante, and that no other person is interested in said cargo.

That the said vessel Josephine was loaded in New Orleans, in the month of February, 1862, with the said cargo, with the intention to proceed to Havana, as soon as the port of New Orleans should be captured and opened by the forces of the United States. It was the intention of the said Edward La Plante, upon the arrival of said vessel and cargo at Havana, to ship said cargo for Bordeaux, in one of the vessels regularly plying between Havana and Bordeaux.

The said Edward La Plante had by letter written from Bordeaux, directed to said Paul Queyrouze, in New Orleans, instructed the said Paul Queyrouze to load a vessel, and to keep said vessel and cargo at New Orleans until the opening of said port by the United States. It had been expected that an attack would be made on said city by the government forces, and anticipating that it would be captured, it was deemed expedient by the said Edward La Plante, to have a vessel loaded ready to leave immediately upon the opening of the port by the United States authorities. The
18 instructions to this effect were obeyed by the said Paul Queyrouze, and the vessel having been loaded as aforesaid, she remained at a wharf of the port last named, until the investment of the forts below the said city in April, 1862. At that time, and when it became evident, that the federal forces would capture the city, the rebel commanding general issued a proclamation commanding the destruction of all vessels lying at New Orleans, together with all cotton, tobacco, sugar, &c., found on board of them, or in store for shipment.

To avoid said destruction, the master of said vessel, John Cummins, caused said vessel to be towed into Bayou Chene, to a point in

the interior, distant from New Orleans, where she lay concealed for a long time. The master meantime endeavored to communicate the true character of the vessel and her cargo and destined voyage to the federal authorities, in order that he might be brought within their protection, and be permitted to be licensed, and to proceed on his voyage to Havana. But he was utterly unable to open communication or correspondence with any of the federal authorities, because of the rebel governor having prohibited the same by his proclamation.

That on or about the 25th day of July, A. D. 1863, it having been reported that the rebel commander of the district wherein the Josephine lay concealed designed to destroy the vessel, the master managed to escape with her, and the cargo, from the place of concealment to the Gulf, by passing through secret passages. On
19 reaching the Gulf the master shaped his course for the mouth of the Mississippi, in the expectation of falling in with some of the United States blockading squadron, and obtaining from them a license or permission to proceed on the intended voyage. But on the 28th day of July, 1862, while hauling round the Ship shoal, in full view of the light-house, the said vessel Josephine was wrongfully seized and captured by an armed vessel-of-war, the United States steamer Hatteras, Commander Emmons, an officer of the United States navy, and by means of a prize crew, then and there placed on board, was forcibly brought, with her said cargo, to the port of Philadelphia.

And the said Paul Queyrouze further avers that said vessel had no destination, either for herself or cargo, when she entered the Gulf in the first instance, after she succeeded in escaping from the rebels, except for the United States blockading fleet off the mouth of the Mississippi. It was by this time impossible for the said master to proceed to Havana, because the provisions and stores on board had been consumed, and his only and sole object was to reach the blockading fleet off the mouth of the Mississippi, and obtain his clearance and necessary supplies.

That the said cargo was shipped and owned by said Edward La Plante, a French subject, and not for, by, or on account of any person or persons resident in the rebel States, or any of them, or
20 any person at war with the United States, nor for the use or benefit of any such person or persons; nor will the same, if restored, belong to any such persons, but, on the contrary, will belong to said Edward La Plante.

And said claimant further avers that said cargo was not, nor was any part of it, at the time of said seizure, the property of the enemies of the United States, nor was the same, or any part thereof, intended for or designed to give aid or comfort to the rebels in the United States; or to their friends elsewhere, or to the enemies of the United States, nor was said vessel engaged in violating or attempting to violate, nor did she intend to violate any blockade, of any port or ports in the United States.

Wherefore he prays to be admitted to defend accordingly, and that said cargo be discharged from arrest and restored to the said claimant, and that proper damages with costs be adjudged, and paid to him for the wrong suffered.

PAUL QUEYROUZE.

Sworn and subscribed before me, January 17, 1863.

G. R. FOX,
Clerk Dis't C't U. S.

And thereupon leave is granted to the said proctor to file the said claim, subject, however, to all legal exceptions.

21 And now, April 20, 1863, this case of the said vessel came to be heard upon the application of the attorney of the United States, for the condemnation of the said vessel, and it appeared to the court that the monition had been duly executed and published, and that the three several proclamations had been made, that if any one hath aught to say why the said vessel and cargo should not be condemned, he may appear and be heard, and no claimant of the said vessel having intervened, and the cause as to the said vessel having been heard upon the libel filed therein, and the examinations in preparatorio, and the papers and documents found on board of the said vessel at the time of capture, the court duly considered the several matters appearing from the said preparatory proofs and papers, and was of opinion that the said vessel was confiscable and liable to condemnation as prize of war. Therefore, it was adjudged and decreed that the said vessel should be, and the same hereby is, condemned as the property of enemies of the United States, or otherwise confiscable as lawful prize.

And afterwards, to wit, on the twenty-first day of April, A. D. 1863, a final decree as to the cargo, is pronounced in the words and figures following, to wit:

22 I, John Cadwalader, judge of the district court of the United States in and for the eastern district of Pennsylvania, duly authorized under the Constitution and laws of the United States, to hear and determine in the said district all causes and complaints as to ships or vessels and goods, etc., seized and taken as prize, having heard and considered the merits and circumstances of a certain cause or proceeding respecting the capture or seizure of the cargo laden on board of a certain brig called the Josephine, whereof John Cummings was master, captured on the high seas on the 28th day of July, 1862, by the steamer Hatteras, of the navy of the United States, and brought with said brig into the port of Philadelphia, in the said district, which cause or proceeding was lately and still is depending before me, (the said vessel having, by decree of said court, been condemned, as by the record of the said decree appears,)

23 and the said cause, as to the said cargo, having been heard upon the preparatory proofs and papers, and the libel and claim for the cargo presented by Paul Queyrouze, for and on behalf of Edward Laplante, and having been argued by the attorney and assistant attorney of the United States, and by the advocate for the claimant, I, the said judge, was of opinion, that the said cargo was

confiscable and liable to condemnation, as lawful prize of war, and within the designation of property of enemies of the United States, and upon the application of the attorney of the United States, praying condemnation of the cargo as prize of war, did on the 21st day of April, 1863, pronounce and adjudge the said cargo to have belonged, at the time of the capture aforesaid, to enemies of the United States, and to be, as such or otherwise, subject and liable to confiscation, and did condemn the same as good and lawful prize.

And now, April 23, 1863, in open court, the claimant of said cargo, by his proctor and advocate, F. C. Brewster, esquire, prays an appeal, according to law, from the decree of the said district court, entered on the 21st inst., condemning as prize of war the cargo of the said schooner Josephine, heretofore claimed by him; and the same is allowed.

24 *Interrogatories.*

1. Where were you born? Of what country are you now a citizen or subject? Where do you reside? Have you at any time, and if aye, when and where, been naturalized as a citizen of the United States, and are you in any manner interested in the captured vessel, her cargo or voyage, as owner, supercargo, agent, or otherwise, howsoever?

2. Were you present, and in what capacity, at the capture in question? If aye, where and when was the capture made, and for what cause, or alleged cause? Under what authority, commission, or license and flag did the captured vessel sail? Was any, and what resistance made at the time of capture; and were any other, and what other, ships and vessels in sight at the time of the capture?

3. Who is the master of the captured vessel? Where was he born? Of what country is he now a citizen or subject, and where does he generally reside? Who, also, are the owners of the captured vessel? Where were they born? Of what country are they now citizens or subjects, and where do they generally reside?

4. What is the name of the captured vessel? What is her tonnage? Where was she built? What are the number of her officers and crew? Were there any supercargo and passengers on board? Who were they, respectively? Whence did they come, and whither were they going? Was the vessel armed, and in what manner, and had she any contract, agreement, license, protection, passport, or sea brief on board from any government, or any officer thereof, at the time of the capture, at the time of the commencement of the voyage, or at any other, and at what, time during the present or any former voyage?

5. From what place did the captured vessel sail on her present voyage? To what place and places was she bound during the voyage? What cargo had she on board at the time of her sailing on the voyage, and also at the time of her capture? At what place and time was the cargo put on board? Of what place or places, respectively, was it the growth, produce, or manufacture? And out of what funds was the same purchased; and who are the laders, owners and consignees of the cargo? Where were they bound from? Of what country are they now citizens

or subjects, and where do they generally reside? And who would have been the true owners of the said cargo, and every part thereof, if the same had been or should be delivered at the port of destination of the said vessel?

6. What number of bills of lading, receipts or invoices, for the respective shipments of the cargo, was signed by the captain? To whom and where were the respective shipments of the cargo deliverable? Was there any, and what indorsement or transfer of such bills of lading, receipts, or invoices? What papers, bills of lading, receipts, invoices, letters, or other writings were on board the captured vessel at the time of her departure from her last clearing port, before the capture? Were any of them burnt, torn, thrown overboard, destroyed or cancelled, concealed, or attempted to be concealed, and when and by whom, and who was then present? And are there in any country or place any contracts, agreements, bills of sale, charter party, bills of lading, receipts, invoices or other instruments and writings concerning the captured vessel, her cargo and voyage, other than those given up at the time of the capture? And if aye, where are they, of what nature are they, and what are their contents?

7. Was bulk broken during the voyage in which you were taken, or since the said ship was captured? If yea, when, where, and by whom, by whose orders, for what purpose, and in what manner?

8. Were there any passengers on board the captured vessel during any, and what, part of the voyage on which she was captured? If yea, how many, and who were such passengers by name? Of what nation, state, city or district, rank, profession or occupation was each of them? Did any, and which of them, hold any, and what, commission; and from whom and for what purpose? Were any, and which, of such passengers secreted at the time of the capture, and why; and what place, and when was each of them taken on board? To what place was each of them destined, or said or supposed to be destined, and upon what business; or for what real purpose or design was he destined there? Did they pay, or agree to pay, anything, and what, for their passage, and to whom? Had any, and which, of such passengers, any, and what, property, or concern, or authority, directly or indirectly, regarding the ship or cargo? Was there at any time during the voyage in which the said ship was captured, any officers, soldiers, or marines secreted on board of her; and if yea, for what reason were they so secreted; and for how long had they been so secreted, and for what reason?

9. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the vessel and cargo concerning which you are now examined at the time of the capture?

10. If the capture was for a violation or alleged violation of a maritime blockade, state the number and armaments of the vessels composing the blockading force, and their positions and distances from one another, and from any point or points on shore, so as to show the

extent to which the blockade was actually maintained, as far as your knowledge may enable you so to do; and also, what notice or warning, if any, was given, and when and how given or repeated.

10. Did you, during the voyage on which you were captured, at, or before, or after the time of capture, or during the previous voyage in which the captured vessel reached the port of her departure on the said voyage, see any, and what, blockading or alleged blockading vessel or vessels? If so, state the name or names, and armament or armaments of such vessel or vessels; and where you, at any and each time or times, saw her or them, and each of them, mentioning as nearly as you can the positions and distances of such vessel or vessels from the nearest or any other known point on shore; and if there were more than one vessel, their distances from and relative positions to one another, and every other fact within your knowledge or belief relating to any such blockade, or alleged blockade or blockades.

11. Was any, and if any, what, notice or warning given to the captured vessel, or to any, and what, person or persons on board of her, by or from any blockading or alleged blockading vessel or vessels, or any officer or person on board thereof; and when, or how, was the same given or repeated? If a notice or warning had been given before the time of capture, state precisely and in detail the course of the navigation of the captured vessel from the time thereof until her capture.

25 PRIZE COMMISSIONER'S REPORT.

In re, the prize brig Josephine.

To the honorable John Cadwalader, U. S. district court in and for the eastern district of Pennsylvania:

I respectfully return herewith the log-book and package of receipts found on board and with the prize brig above named, together with the affidavit of the prize master, and the depositions of the persons produced by the captors for examination.

FIRST.—THE OWNERSHIP OF THE VESSEL.

With the exception of the receipts above mentioned, and the log-book, the contents of which were torn out, (that is, the contents upon which apparently there had been any writing,) there were no papers or documents on board the captured vessel. "I gave up to the captors," says the master, "no papers or documents, having none." He admits, however, that he had a mail containing letters, (the
26 number he does not know,) which he was instructed by one of the owners to destroy, in case of capture, and which, in pursuance of instructions, he did destroy.

The master says, in respect to the ownership of the vessel, as follows: "The owners of the captured vessel, so far as I have any knowledge, are a Mr. Dennis, who resides in New Orleans, but he is a native of France. I do not know whether he was ever naturalized as a citizen of the United States. The other owner is a Mr. Sixé. He is a French subject, but does business and resides in New Orleans."

SECOND. THE OWNERSHIP OF THE CARGO.

The master says that the above-mentioned Mr. Dennis told him that he was one of the owners of the cargo, and the master presumes that the other owner is Mr. Sixé, already described as an owner of the vessel.

THIRD. THE VOYAGE.

"I sailed from New Orleans," says the master, "four days before the capture of that city by the U. S. forces. I took my vessel to Bayou Chené. I got out to sea through the inland channels of Louisiana, on the 27th day of July last. I was bound to some port in Cuba, or wherever I could get my vessel. My cargo consisted at the time of sailing on the voyage, so far as I know, of three hundred and twenty-two bales of cotton, and twelve hundred staves. It was put on board in New Orleans, in the month of February last."

27 FOURTH. THE CAPTURE.

The capture was made on the 28th day of July last, off Ship shoal light, about eight miles distant, by the U. S. S. Hatteras.

All which is respectfully submitted and reported.

Sept. 9, 1862.

HENRY FLANDERS, *Commissioner.*

28 In re, the prize brig Josephine.—Examination in preparatorio.

District court of the United States in and for the eastern district of Pennsylvania.

Samuel C. Cruse, acting master in the navy of the United States, being first duly sworn, deposes and says, that he was present when the said vessel was captured; that the capture was made by the U. S. S. Hatteras; that no other U. S. vessel was in sight or signalling distance at the time; that the capture was made off Ship shoal light-house, Louisiana, bearing east by north, at about eight miles distance from land; that the capture was made on the 28th day of July last; that the only books and documents found on board and with the said prize, are the log-book, and a package of receipts, marked and enumerated by Henry Flanders, the commissioner in this case, as Nos. 2 and 1, respectively; that they are delivered to the said commissioner as they were found, without any fraud, subduction, addition, or embezzlement; that he personally knows of no papers connected with the said prize, being missing, but he has understood that papers were thrown overboard, about the time of the capture; and he further swears that if hereafter any papers connected with the captured property should be found or discovered to the knowledge of this deponent, they shall also be delivered up, or information of the same
29 be given to the commissioner, or to the court.

(Signed) SAMUEL C. CRUSE.
Acting Master.

Sworn and subscribed before me this 3d day of Sept., 1862.

HENRY FLANDERS, *Commissioner.*

In re, the brig Josephine.

District court of the United States, in and for the eastern district of Pennsylvania.

John Cummings, master of said brig, being first duly sworn, deposes and says, in answer to the first interrogatory, as follows: I was born in St. John's, New Brunswick. I am now a citizen of the United States, having been naturalized as such, at New Orleans, about the year 1855. I generally reside at New Orleans. I am interested in the captured vessel, her cargo and voyage, as agent of the owners. I am the representative of all parties in interest, and was authorized to make whatever disposition of the property, I saw fit. The
30 vessel is also indebted to me about three hundred dollars.

To the second interrogatory he answers as follows: I was present at the capture in question, being in command of the captured vessel. I was captured off Ship shoal light-house, bearing east northeast, and at a distance from said light-house about ten miles. It was made on the 28th day of July last, about six o'clock in the morning. The alleged cause of my capture was, that I had no clearance. I cleared at no custom-house, but I sailed under the English flag. No resistance was made at the time of the capture, which was made by the United States S. Hatteras. There were no other U. S. vessels in sight or signalling distance at the time.

To the third interrogatory he answers as follows: I am master of the captured vessel, as stated in my answer to the first interrogatory. The owners of the captured vessel, so far as I have any knowledge, are a Mr. Dennis, who resides in New Orleans, but he is a native of France. I do not know whether he was ever naturalized as a citizen of the United States. The other owner is a Mr. Sixé. He is a French subject, but does business and resides in New Orleans.

To the fourth interrogatory he answers as follows: Josephine is the name of the captured vessel. Her tonnage is about one hundred and sixty tons. I do not know where she was built, but somewhere in the United States. Her officers and crew, all told, are
31 seven. There was no supercargo on board, and the vessel was not armed. There were no papers of the kind here inquired of on board.

To the fifth interrogatory he answers as follows: I sailed from New Orleans four days before the capture of that city by the U. S. forces. I took my vessel to Bayou Chené. I got out to sea through the inland channels of Louisiana, on the 27th day of July last. I was bound to some port in Cuba, or wherever I could get my vessel. My cargo at the time of sailing on the voyage, so far as I know, consisted of three hundred and twenty-two bales of cotton, and twelve hundred staves. It was the same at the time of capture. It was put on board in New Orleans, in the month of February last. It was of southern growth, produce, and manufacture. I do not know out of what funds it was purchased. I have no knowledge of the other matters here inquired of, except that Mr. Dennis, already mentioned as one of the owners of the vessel, told me that he was one of the owners of the

cargo, and I presume the other owner is Mr. Sixé, before mentioned as also one of the owners of the vessel.

To the sixth interrogatory he answers as follows: I signed three bills of lading. The cargo was deliverable to Mr. Cabuzac, of Havana, in case I arrived there; that is, I was to go to him for orders. I had a mail containing letters, but how many I do not know, on board
32 at the time of sailing on the voyage, which I was instructed by Mr. Sixé to destroy in case of capture, and which I threw overboard in pursuance of my instructions. I gave up to the captors no papers or documents, having none.

To the seventh interrogatory he answers as follows: Bulk was not broken before or after the capture.

To the eighth interrogatory he answers as follows: There were no passengers on board during any part of the voyage.

To the ninth interrogatory he answers as follows: I have no other knowledge of the matters here inquired of than what I have already stated.

To the tenth interrogatory he answers as follows: I saw no blockading vessel at any time during the voyage, with the exception of the Hatteras, which captured us.

To the eleventh interrogatory he answers as follows: No notice or warning was given the captured vessel by any blockading vessel or vessels.

JOHN CUMMINGS.

Sworn to and subscribed before me this 3d day of Sept., 1862.

HENRY FLANDERS,
Prize Commissioner.

33 Zephaniah Pierce, mate on board said brig, being first duly sworn, deposes and says, in answer to the first interrogatory, as follows: I was born in Monmouth county, New Jersey. I am now a citizen of the United States. I have resided for the last three years in Franklin, St. Mary's parish, Louisiana. I have no interest in the captured vessel, her cargo or voyage, in any other capacity than as a hand on board.

To the second interrogatory he answers as follows: I was present at the capture in question, in my said capacity of mate on board the captured vessel. The capture was made off Ship shoal, eight miles distance; we were heading, at the time, southeast. The capture was made on the morning of the 28th of July last. The cause of the capture, I presume, was the supposition that we had run the blockade. We sailed under the English flag. No resistance was made at the time of the capture. The capture was made by the U. S. S. Hatteras, and no other U. S. vessels were in sight at the time.

To the third interrogatory he answers as follows: John Cummings is the master of the captured vessel. I do not know where he was born. I think he is an English subject, and resides in New Orleans. I have no knowledge of the matters here inquired of.

34 To the fourth interrogatory he answers as follows : Josephine is the name of the captured vessel. I do not know her tonnage, nor where she was built. Her officers and crew all told are seven. There was no supercargo on board. The vessel was not armed. I have no knowledge of the papers here inquired of.

To the fifth interrogatory he answers as follows : The captured vessel sailed on her present voyage from Bayou Botey, Louisiana. She was bound to Havana. Her cargo at the time of sailing on the voyage consisted of three hundred and twenty-two bales of cotton and twelve hundred staves. It was the same at the time of capture. The vessel was loaded when I joined her, and I do not know whose the cargo was, put on board. I have no knowledge of the other matters here inquired of.

To the sixth interrogatory he answers as follows : I have no knowledge of the matter here enquired of, except that a little before the capture the captain threw overboard a bundle of papers.

To the seventh interrogatory he answers as follows : Bulk was not broken before nor after the capture.

To the eighth interrogatory he answers as follows : There were no passengers on board during any part of the voyage.

To the ninth interrogatory he answers as follows : I have no knowledge of the matters here inquired of, other than what I have already stated.

35 To the tenth interrogatory he answers as follows : I saw no blockading vessel or vessels, other than the one that captured us.

To the eleventh interrogatory he answers as follows : No notice or warning was given the captured vessel by any blockading vessel or vessels.

his
ZEPHANIAH + PIERCE.
mark.

Sworn and subscribed before me this 3d day of Sept., 1862.
HENRY FLANDERS, *Commissioner.*

John Seacoler, a hand on board, being first duly sworn, deposes and says, in answer to the first interrogatory, as follows : I was born in Finland. I am a Russian subject. I have no interest in the captured vessel, her cargo or voyage, in any other capacity than as a hand on board.

To the second interrogatory he answers as follows : I was present at the capture in question. I am not well acquainted with that part of the coast, and I cannot tell where we were captured. It was near some light-house on the coast of Louisiana. The capture was made five weeks ago last Monday. It must have been because we had run the blockade. We sailed under the English flag. No resistance was made at the time of the capture. There were no other U. S. vessels in sight at the time.

To the third interrogatory he answers as follows : Captain Cummings is the master of the captured vessel. I have no knowledge of the other matters here inquired of.

To the fourth interrogatory he answers as follows: Josephine is the name of the captured vessel. Her officers and crew, all told, are seven. There was no supercargo on board. The vessel was not armed. I have no knowledge of the other matters here inquired of.

36 To the fifth interrogatory he answers as follows: We sailed out by some of the bayous of Louisiana, but I don't know which. We were bound to Havana. Our cargo consisted of cotton and staves. The cargo was put on board, I have heard, in New Orleans. It is southern cotton. Of the other matters here inquired of I have no knowledge.

To the sixth interrogatory he answers as follows: I have no knowledge of the matters here inquired of.

To the seventh interrogatory he answers as follows: Bulk was not broken before or after the capture.

To the eighth interrogatory he answers as follows: There were no passengers on board during any part of the voyage.

To the ninth interrogatory he answers as follows: I have no knowledge of the matters here inquired of.

To the tenth interrogatory he answers thus: I saw no other blockading vessel until we were captured than the Hatteras.

To the eleventh interrogatory he answers thus: No notice or warning was given the captured vessel by any blockading vessel or vessels.

JOHN SEEKULD.

Sworn and subscribed before me this 3d day of Sept., 1862.

HENRY FLANDERS, *Commissioner.*

41 *Ship's papers returned by prize commissioner, Henry Flanders.*

H. F. No. 1.

No. 12. NEW ORLEANS, *Feb'y* 19, 1862.

BRIG JOSEPHINE:

Received in good order, from Szymanski's new cotton press, thirty bales cotton.

Marks: E S P 16
O K L 14 30 bales. Please read the name of the ship.

No. 11. NEW ORLEANS, *Feb'y* 19, 1862.

BRIG JOSEPHINE:

Received in good order, from Szymanski's new cotton press, thirty bales cotton.

Marks: S P D 7
E S P 23 30 bales. Please read the name of the ship.

42 No. 10. NEW ORLEANS, *Feb'y* 18, 1862.
BRIG JOSEPHINE :

Received in good order, from Szymanski's new cotton press, thirty bales cotton.

Marks : S P D 30 30 bales. Please read the name of the ship.

No. 9. NEW ORLEANS, *Feb'y* 18, 1862.
BRIG JOSEPHINE :

Received in good order, from Szymanski's new cotton press, thirty bales cotton.

Marks : C S C 16
E M C 8
S P D 6 30 bales. Please read the name of the ship.

No. 8. NEW ORLEANS, *Feb'y* 17, 1862.
BRIG JOSEPHINE :

Received in good order, from Szymanski's new cotton press, thirty bales cotton.

Marks : C S C 30 30 bales. Please read the name of the ship.

43 No. 7. NEW ORLEANS, *Feb'y* 17, 1862.
BRIG JOSEPHINE :

Received in good order, from Szymanski's new cotton press, thirty bales cotton.

Marks : 30 bales. Please read the name of the ship.

No. 6. NEW ORLEANS, *Feb'y* 17, 1862.
BRIG JOSEPHINE :

Received in good order, from Szymanski's new cotton press, thirty bales cotton.

Marks : 30 bales. Please read the name of the ship.

No. 1. NEW ORLEANS, *Feb'y* 15, 1862.
BRIG JOSEPHINE :

Received in good order, from Szymanski's new cotton press, fifteen bales cotton.

Marks : 15 bales. Please read the name of the ship.

No. 5. NEW ORLEANS, *Feb'y* 15, 1862.
BRIG JOSEPHINE :

Received in good order, from Szymanski's new cotton press, eighteen bales cotton.

Marks : 18 bales. Please read the name of the ship.

44 – No. 2, H. F.

Journal from Ship Shoal light-house towards Philadelphia; prize brig Josephine, taken by U. S. steamer Hatteras.

H.	K.	F.	Courses.	Winds.	Leeway.	Remarks, Tuesday, July 29, 1862.
1						
2						
3						
4	6		SE.....	SE.....	.....	At 4 p. m. the U. S. steamer Hatteras took her prize brig Josephine, in tow and steered off to the south and eastward, with the following prize crew on board: Samuel C. Cruse, acting master; John Rose, seaman; Vernon Lewis, ditto; William A. Jenkins, ordinary seaman, George W. Vierns, landsman; Robert Johnson, ditto; J. C. Ellingsworth, ordinary seaman.
5	6					
6	6					
7	6					
8	6					
9	6					
10	6					
11	6					Middle part moderate breezes and clear weather.
12	5					At 5 a. m. cast off from the U. S. steamer Hatteras, she steering in her course NW. for the land; made all sail on board of prize brig, and proceeded for Philadelphia.
1	5					
2	5					
3	5					
4	5					
5	5					
6	2	....	E NE.....	SE.....	1	
7	2	....	....	.....	"	
8	2	....	E. by N....	SE. by S...	"	
9	2	....	.....	.....	"	Latter part ditto weather.
10	3	....	....	.....	"	
11	3	....	E. by S....	S.SE	"	Latitude by observation, 27° 51′ north.
12	3	...	1 day out..	.....	"	Longitude by chronometer, 189° 48′ west.
	94	Miles dist. per log.				

H.	K.	F.	Courses.	Winds.	Leeway.	Remarks, Wednesday, July 30, 1862.
1	2	5	E.NE	SE.....	1	Commenced with light breezes and clear weather.
2	2	5				
3	2	5				
4	2	5				
5	2	5				
6	2	5				
7	2	5				
8	3					
9	3					
10	3	....	E. by N ...	SE. by S.		
11	3					
12	3	....	....	.....	. .....	Midnight, ditto weather.
1	3					
2	3					
3	3					
4	3					
5	3	....	.....	.....	.....	At 5 a. m. sent up foretop gall't mast, foretop gall't yard; bent the sail, and set in.
6	3					
7	3					
8	2	5	E.NE	SE	.....	At 8 a. m. saw a two-masted schooner to leeward, steering to the east, close hauled.
9	2	5				
10	2	5				
11	2	5	.....	.....	.....	Latter part, ditto weather.
12	2	5	2 days out.	.....	.....	Lat. by observation, 28° 28′ north; long. by chronometer, 88° 50′ west.
	66	Miles dis. per day.				

SAMUEL C. CRUSE,
Prize Master.

45 *Journal from Ship Shoal light-house towards Philadelphia, of prize brig Josephine, taken by U. S. steamer Hatteras.*

H.	F.	K.	Courses.	Winds.	Leeway.	Remarks, Thursday, July 31, 1863.
1	2	5	NE.	E.SE.....	.....	Light from the south'd and east'd, with clear weather.
2	2	5				
3	2	5	.....	.....	.....	At 3 p. m. wind hauling to the east'd, tacked to south'd.
4	2	5	South	East.		
5	2	5				
6	2	5				
7	3					
8	3					
9	3					
10	3					
11	3	....	.....	.....	.....	Middle part, ditto weather; at 5 a. m. tacked to eastward.
12	3					
1	3					
2	3					
3	3					
4	2	5				
5	2	5				
6	2	5	E. by N ...	S SE.		
7	2	5				
8	2	5				
9	2	5				
10	2	5	.....	.....	.....	Latter part ditto weather; 2 schooners in sight bound to the south'd and east'd.
11	2	5				
12	2	5	3 days out.	.....	.....	Lat. by act., 27° 45′ north; long. by ditto, 89° 00′ north.
	66		Miles dis. per day.			

H.	K.	F.	Courses.	Winds.	Leeway.	Remarks, Friday, August 1, 1862.
1	2	....	NE. by E..	SE	.....	Light breezes from south'd and east, with clear weather.
2	2					
3	2					
4	2					
5	2					
6	2					
7	3					
8	3					
9	3					
10	3					
11	3	...	SE. by E ..	SW.		
12	3	....	.....	.....	.....	Middle part ditto weather; breezing from southward.
1	3					
2	3					
3	3					
4	3					
5	3					
6	3	5	SE.			
7	3	5				
8	3	5				
9	3	5	.....	.....	....	Latter part, ditto weather.
10	3	5				
11	3	5	.....	.....	.....	Lat. by obs., 28° 10′ north; long. by chro., 87° 40′ west.
12	3	5	SE. by E ..	4 days out.		
	70		Miles per log.			

46 *Journal from Saturday, August 3, from Ship shoal towards Philadelphia, of prize brig Josephine, taken by U. S. steamer Hatteras.*

H.	K.	F.	Courses.	Winds.	Leeway.	Remarks, Saturday, August 2, 1862.
1	3	5	SE.....	SW.....	1.....	Commences with moderate breezes and pleasant weather; a schooner in sight.
2	3	5				
3	3	5				
4	3	5				
5	3	5				
6	3	5				
7	3	5				
8	3	5				
9	3	5				
10	3	5				
11	3	5				
12	3	5	.....	.....	.....	Middle part, ditto weather.
1	3	5				
2	3	5				
3	4					
4	4					
5	4					
6	4	....	.....	.....	.....	At 6 a. m. see a bark steering to the north'd and west'd.
7	4					
8	4					
9	4	....	.....	.....	.....	Latter part, ditto weather.
10	4					
11	4	....	.....	.....	.....	Lat. by obs., 27° 23′ north; long. by chro., 86° 24′ west.
12	4	....	5 days out.			
	89		Miles dis. per day.			

H.	K.	F.	Courses.	Winds.	Leeway.	Remarks, Sunday, August 3, 1862.
1	3	...	SE. ½ E....	SW. light..	.....	Commences with light breezes from south'd and west'd.
2	3					
3	3					
4	3	....	.....	.....	.....	At 5 p. m. squally.
5	4					
6	4					
7	4					
8	4					
9	4					
10	4					
11	4					
12	4	...	.....	.....	.....	Midnight squally.
1	4					
2	4					
3	4					
4	4					
5	4					
6	4					
7	4					
8	4	....	....	.....	.....	Latter part, ditto weather; see 2 sails bound the north and west.
9	3					
10	3					
11	3	....	.....	.....	.....	Lat. by obs., 26° 26′ north; long. by chro., 85° 40′ west.
12	3	...	6 days out.			
	86		Miles dis. per day.			

47 *Journal from Ship Shoal light-house towards Philadelphia, of prize brig Josephine, taken by the U. S. steamer Hatteras.*

H.	K.	F.	Courses.	Winds.	Leeway.	Remarks, Monday, August 1, 1862.
1	....	....	Calm.....	Calm.....	.....	Calm and light puffs of wind from the southward and east'd, with clear weather.
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12	....	....	.....	.....	.....	Middle part, ditto weather.
1						
2						
3						
4						
5						
6						
7						
8	....	....	.....	....	.....	Latter part, ditto weather; see a brig steering to the SE. Also see a ship steering to the westward.
9						
10						
11						
12	....	....	.....	.....	.....	Lat. by obs., 26° 26′ north; long. by chro., 85° 11′ west.

H.	K.	F.	Courses.	Winds.	Leeway.	Remarks, Tuesday, August 5, 1862.
1	3	....	E.SE.....	E.NE	.....	Commences with light airs and squally weather.
2	3					
3	3					
4	3					
5	3					
6	3					
7	3					
8	3					
9	3					
10	2					
11	2					
12	2	...	.....	.....	.....	Middle part, ditto weather.
1	2					
2	2					
3	2					
4	2					
5	2					
6	2					
7	2					
8	2	....	.....	.....	.....	At 8 a. m. see a American, came up and passed us; took it to be the U. S. fr. Santee; latter part, ditto weather.
9	2					
10	2					
11	2					
12	2	....	.....	.....	.....	Lat. by obs., 25° 19′ north; long. by chro., 85° 45′ west.

48

H.	K.	F.	Courses.	Winds.	Leeway.	Remarks, Wednesday, August 6, 1862.
1	2	....	SE	E.NE.....	.....	Commences with light baffling airs and squally weather.
2	2					
3	3					
4	3					
5	3					
6	3	....	.....	.....	.....	At 6 p. m. squalls increasing; single reefed the mainsail.
7	3					
8	3	....	.....	.....	.....	At 8 still increasing; single-reefed foretopsail.
9	3					
10	3	....	.....	.....	.....	At 10 still *still* increasing; took in light mainsail, foresail, and close-reefed foretopsail.
11	3					
12	3	....	.....	.....	.....	Middle part blowing heavy gale from eastward with a high sea on.
1	3	....	S.SE.	East.		
2	3					
3	3					
4	3					
5	3					
6	3	....	.....	.....	.....	Latter part moderating; out all reefs.
7	3					
8	3					
9	3					
10	3					
11	3	....	E.NE	.....	.....	Lat. by obs., 23° 41′ north; long. by chro., 84° 24′ west.
12	3					

H.	K.	F.	Courses.	Winds.	Leeway.	Remarks, Thursday, August 7, 1862.
1	4	....	NE. by E..	E. by S....	.....	Commences with moderate breezes and clear weather.
2	4					
3	4					
4	4					
5	4					
6	4					
7	4					
8	3					
9	3					
10	3					
11	3	....	.....	.....	.....	Middle part, ditto weather.
12	3					
1	3					
2	3					
3	3					
4	3					
5	3					
6	3					
7	3					
8	3	....	.....	.....	.....	Latter part, ditto weather.
9	3					
10	3					
11	3	....	.....	.....	.....	Lat. by obs, 23° 59′ north; long. by chro., 83° 30′ west.
12	3					

49 Among the papers filed of record in this case, are the depositions of George D. Hoffner and Frederick A. Conkling, taken on behalf of the United States and the captors, which, as they do not form part of the preparatory proofs and papers on which the said cause was adjudged, are not among those copied for transmission to the court of appeal.

50 UNITED STATES,
Eastern District of Pennsylvania:

I certify the foregoing to be a true and faithful copy of the records and proceedings of the district court of the United States for the eastern district of Pennsylvania, in a certain cause of prize therein lately pending, wherein the United States were libellants against the

schooner Josephine, her tackle, apparel, and furniture, and the goods, wares, and merchandise laden on board thereof, captured by the United States steamer "Hatteras," one of the Gulf naval squadron.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, the eighth day of July, A. D. 1863, and in the eighty-eighth year of the independence of the said United States.

[SEAL.]

CHARLES S. LINCOLN,
Pro. Clk. Dist. Ct. U. S.

Filed.

IN THE

Supreme Court of the United States,

No. 263.

PAUL QUEYROUZE, on behalf of EDWARD LAPLANTE, Claimant of the Cargo of the SCHOONER JOSEPHINE, Appellant,

vs.

THE UNITED STATES.

Claimant's and Appellant's Brief.

SIMON GRATZ,
F. CARROLL BREWSTER,
For Appellant.

Crissy & Markley, Printers, Goldsmiths Hall, Library Street, Philadelphia.

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Supreme Court of the United States.

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THE UNITED STATES.

Claimant's and Appellant's Brief.

The Schooner Josephine and cargo having been condemned, as prize, by the District Court of the United States for the Eastern District of Pennsylvania, this appeal is taken, by the claimant of the cargo, to the Supreme Court of the United States.

It is submitted that there are two grounds, only, upon which this cargo could be liable to seizure and condemnation:—

1. As being enemy's property.

2. For breach of the blockade.

Did either of these taints attach to the cargo, so as to make it a proper subject of condemnation as prize of war?

1. Was it enemy's property?

It was the property of Edward Laplante, a French subject, who resided in his native country, and never had even a temporary residence within the limits of rebeldom. He was the sole owner of the entire cargo. The affidavit of Paul Queyrouze establishes this fact beyond doubt. The *presumptions* of the Master of the captured vessel upon this point, cannot stand against the *positive testimony* of Queyrouze.

Mr. Laplante, therefore, having had no settlement or residence in territory occupied by and under the temporary rule of the rebels, no hostile character could be impressed upon this cargo on the ground of its owner's residence in the enemy's country.

Nor can such a hostile character be fastened upon it on account of the residence of Mr. Queyrouze, Laplante's agent, in New Orleans, while that City was in the possession of the rebels. For the well-established rule is, that a neutral merchant may trade, in the ordinary manner, to the country of a belligerent, by means of a stationed agent there, and yet not contract the character of a domiciled person.

THE ANNA CATHARINA, 4 Rob. Rep. 107.

THE INDIANO, 2 Gallison, 268.

1 KENT'S COM., pp. 77, 78.

2. Was this cargo liable to condemnation on the ground of *breach of the blockade?*

I. It is a self-evident proposition that, in order to justify a seizure and condemnation of property as prize of war for breach of a blockade, the blockade must in point of fact be existing at the time of the seizure. And where the blockade has ceased before the capture is made, the penalty for a breach of blockade is held to be remitted.

The first question, therefore, which presents itself for consideration under this head, is as to the existence of the blockade of New Orleans at the time the *Josephine* was captured.

The City of New Orleans and its environs were in the possession of the United States Forces on May 1, 1862.

On May 12, 1862, the President of the United States issued his proclamation, in which, after referring to the institution of the blockade of the Southern ports, and stating that the blockade of certain of those ports might then be safely relaxed with advantage to the interests of commerce, he declared that "the blockade of the said ports of Beaufort, Port Royal and *New Orleans* shall so far cease and determine, from and after the first day of June next, that commercial intercourse with those ports, except as to persons and things and information contraband of war, may, from that time, be carried on, &c."

Here, then, was an express revocation of the notification of blockade of the port of New Orleans—and on the first day of June, 1862, the blockade of that port ceased.

The Josephine was captured on July 28, 1862, *nearly two months after the cessation of the blockade.*

Now, inasmuch as the *delictum* is completely done away when the blockade ceases, [The Lisette, 6 Rob. Rep. 387]—and as this is the rule even where the blockade existed at the time the vessel sailed from the port, but ceased or was raised before the capture was made, [Wheaton on Int. Law, page 345 of W. B. Lawrence's edition]—it is not easy to see how the vessel and cargo in question can be held liable to the penalty for breach of blockade.

But II. If there was a breach of blockade, was it *an intentional breach on the part of the owner of the cargo?*

All the cases admit that the neutral must be chargeable with knowledge, either actual or constructive, of the existence of the blockade, *and with an intent*, and with some attempt to break it before he is to suffer the penalty of a violation of it.

1 KENT'S COM., page 149.

An *intention* to violate the blockade must exist, to warrant a

condemnation. Fitzsimmons *vs.* Newport Ins. Co. 4 Cranch. 185.

Though the cargo is always, *prima facie*, implicated in the guilt of the owner or master of the ship, its owner will, nevertheless, be permitted to give proof of the innocence of his intention. And, if this proof be satisfactory, the cargo will be adjudged to be free from the guilt in which the ship is involved, and be restored to its owner.

In *The United States* vs. *Guillem*, 11 Howard, 62, Taney, C. J., says:—"Even in the case of a cargo shipped as a mercantile adventure, and found on board of a vessel liable to condemnation for a breach of blockade, although it is *prima facie* involved in the offence of the vessel, yet, if the owner can show that he did not participate in the offence, his property is not liable to forfeiture. This is the rule as stated by Sir William Scott in the case of The Alexander, 4 Rob. 93, and in the case of The Exchange, 1 Edwards, 39, and recognized in 1 Kent's Com. 151."

In the present case, the owner of the cargo has clearly established the innocence of his intention. The instructions given to Queyrouze by Laplante fully demonstrate that Laplante never designed any attempt to break the blockade. On the contrary, he directed Queyrouze to keep the vessel and cargo at New Orleans *until the opening of that port by the United States.* Queyrouze followed these instructions, and detained the vessel after she had received her cargo, in port, until the act of the enemy deprived him of further control over her. The affidavit of Queyrouze is explicit upon these points.

With the guilt of the vessel (if there be such guilt) we have nothing to do in this case. We ask the Court to discriminate between the vessel and her cargo, and to say, in accordance with the principles of law above stated, that, inasmuch as the owner of this cargo is innocent of any offence, he shall not be made to suffer for the acts of others. Where the owner of the

cargo establishes his innocence, and shows that he was guiltless of any intention to break the blockade, he will not be held responsible for a violation of the blockade by the master of the ship. To hold him thus responsible, would be to put him completely in the power of the Master; and, no matter how pure he may be, to make him bear the burden and suffer the penal consequences of a violation of the law which it was not in his power to prevent, and of which he never suspected the Master would be guilty.

In the case of The Exchange, 1 Edwards, 39, Sir Wm. Scott said:—"Where orders had been given for goods, prior to the existence of a blockade, and it appeared that there was not time for countermanding the shipment afterwards, the Court has held the owner of the cargo not responsible for the act of the enemy's shipper, who might have an interest in sending off the goods in direct opposition to the interest of his principal. And the same indulgence has been exercised where there was no knowledge of the blockade till after the ship had sailed, and the Master, after receiving the information, obstinately persisted in going on to the port of his original destination."

As to the Master's destruction of the mail containing letters.

The act of the Master, in this respect, cannot operate to the injury of the owner of the cargo. For, 1st, the carrying of a mere private mail—that is, one which does not contain *despatches* of the enemy—will not subject either the vessel or her cargo to seizure and confiscation. And, 2d, even where the vessel carries despatches, and is seized in consequence thereof, the cargo will not share her fate where its owner or owners have not participated in the offence.

It cannot be pretended, in the present case, that either Laplante or Queyrouze was guilty of any such offence.

These letters were the only papers which the Master destroyed. He destroyed no papers concerning the ownership of the cargo, for he had none such with him.

In conclusion, it is respectfully submitted that, upon the foregoing grounds, the decree of the Court below, condemning the cargo, should be reversed; and the cargo restored to its claimant, the present appellant.

SIMON GRATZ,
F. CARROLL BREWSTER,
Pro Appellant.

In the Supreme Court of the United States.

No. 139.

DECEMBER TERM, 1864.

In Prize.

PAUL QUEYROUZE, on behalf of EDWARD LAPLANTE, claimant of the cargo of the schooner Josephine, appellant,
vs.
THE UNITED STATES.

Appeal from the district court of the United States for the eastern district of Pennsylvania.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.
TITIAN J. COFFEY,
Special Counsel for the United States.

In the Supreme Court of the United States.

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STATEMENT AND ARGUMENT FOR THE UNITED STATES.

The schooner Josephine, laden with a cargo of 322 bales of cotton and a lot of staves, was captured by the United States ship-of-war Hatteras, George F. Emmons, esq., captain, on the high seas, off Ship Shoal light-house, on the coast of Louisiana, on the 28th of July, 1862, and brought into the port of Philadelphia, where the schooner and cargo were libelled in prize by the United States attorney on the 4th day of September, 1862.

On the 20th of January, 1863, Paul Queyrouze, "in the name and on behalf of Edward Laplante," whom he represented to be a subject of the Emperor of the French, and a resident of the city of Bordeaux, in France, and sole and entire owner of the cargo of the Josephine, intervening for the interest of Laplante in the cargo, made claim to the said cargo, alleging that it was the property of Laplante from the time it was placed on board the vessel, and no other person was interested in it; that the vessel was loaded in New Orleans in February, 1862, with intention to proceed to Havana "as soon as the port of New Orleans should be captured and opened by the forces of the United States," and Laplante intended to ship the cargo at Havana

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in another vessel for Bordeaux ; that Laplante had written from Bordeaux to Queyrouze, at New Orleans, instructing him to load a vessel and keep vessel and cargo there until the port was opened by the United States authorities ; that it had been expected that an attack would be made on the city by the government forces, and, anticipating its capture, Laplante deemed it expedient to have a vessel loaded ready to leave immediately upon the opening of the port ; that Queyrouze obeyed the instruction, and the vessel, having been loaded, remained at the wharf of New Orleans until the investment of the forts below the city, in April, 1862 ; that it then becoming evident the federal forces would capture the city, the rebel commander issued a proclamation commanding the destruction of all vessels lying at New Orleans, with the cotton, tobacco, sugar, &c., on board, or in store for shipment ; to avoid which destruction the master of the Josephine, John Cummings, caused her to be towed into Bayou Chené, to a point in the interior distant from New Orleans, where she lay concealed for a long time ; that the master meantime endeavored to communicate the true character of vessel and cargo and destined voyage to the federal authorities, that he might be brought within their protection and licensed to proceed to Havana, but he was unable to do so because the rebel governor had prohibited it by his proclamation ; that about the 25th July, 1862, it having been reported that the rebel commander of the district where she lay concealed designed to destroy the vessel, the master managed to escape with his vessel and cargo to the Gulf by secret passages ; that he then sailed towards the mouth of the Mississippi, expecting to fall in with some of the United States blockading squadron and obtain the license to proceed on the intended voyage, but on the 28th of July, 1862, while hauling round Ship shoal, in full view of the light-house, she was captured, (Record, pp. 9, 10,) &c.

No claimant of the vessel having intervened, she was, after hearing, condemned as enemy's property, and as otherwise confiscable, on the 20th of April, 1863. (Record, p. 11.)

On the 21st of April, 1863, the court, having heard the cause as to the cargo, on the preparatory proofs and papers, and the libel and claim of Queyrouze for Laplante, condemned the cargo as enemy's property and as otherwise confiscable ; from which decree of the 21st of April, con-

demning the cargo, the proctor of claimant appealed to this court. (Record, p. 12.)

The only question before this court is, therefore, as to the correctness of the decree condemning the cargo.

The singular and very improbable statement accompanying the claim made for Laplante by Queyrouze, which we have here reproduced, is contradicted in many of its material averments by the preparatory testimony, and is not sustained by that testimony in any material averment; nor was it attempted to be verified by any offer of evidence by way of further proof.

John Cummings, master of the Josephine, on his examination, stated that he was a citizen of New Orleans and resided there; that he was the agent of the owners of the captured vessel and her cargo, authorized to make whatever disposition of the property he saw fit; that the owners of the vessel were a Mr. Dennis, a native of France, who resided in New Orleans, and a Mr. Sixé, also a French subject, residing and doing business in New Orleans; she was built in the United States; her cargo, consisting of 322 bales of cotton and 1,200 staves, of southern growth, produce, and manufacture, was put on board in New Orleans, in February, 1862; that *Mr. Dennis, one of the owners of the vessel, told him he was one of the owners of the cargo, and he (the master) presumed that Mr. Sixé was the other owner;* that he signed three bills of lading, and the cargo was deliverable to Mr. Cabuzac, of Havana, to whom he was to go for orders, if he arrived there; that there were no papers of the kind inquired of on board—that is, no contract, agreement, license, protection, passport or sea brief from any government or officer thereof, (Int. 4th,) but that he had a mail, containing letters, on board at the time of sailing, which he was instructed by Mr. Sixé to destroy in case of capture, and which he threw overboard in pursuance of his instructions, and he gave up no papers to the captors, having none; that he sailed from New Orleans four days before the capture of that city by the United States forces, and took his vessel to Bayou Chené; that he got to sea on the 27th of July, 1862, *and was bound to some port in Cuba or wherever he could get his vessel;* and that he was captured on the 28th of July, 1862, off Ship Shoal light-house, bearing east-northeast, *about ten miles* from the light-house, sailing under the English flag, without having cleared at any custom-house. (Record, pp. 16, 17.)

Pierce, the mate, also a resident of Louisiana, corroborates the master, so far as his knowledge extends, stating that they sailed from "Bayou Botey," Louisiana, and *were bound for Havana;* that they sailed under the English flag, and that a little before the capture, the captain threw overboard a bundle of papers. He also presumes the cause of the capture was the supposition that they had run the blockade. (Record, pp. 17, 18.)

Seacolor, a hand on board, says the capture must have been because they had run the blockade.

The ship's papers found on board consisted only of some receipts for cotton, dated on the brig Josephine, from the 15th to the 19th of February, but without signature.

This was all the material evidence in the case.

These statements must be taken for true against the unsupported allegations of Queyrouze, not only because they are legitimate evidence in a prize court, but because they are consistent with the probabilities of the voyage, whilst the allegations of Queyrouze are utterly out of accord with those probabilities and are sustained by no evidence. The evidence, then, contradicts in every material fact the allegations made in the claim, and establishes—

1st. That the cargo was owned by the owners of the vessel, who were residents of New Orleans, doing business there, and therefore enemies of the United States, on whose property, the produce of the enemy country, shipped at and proceeding from an enemy port, a hostile character was clearly impressed.

Although the master gives only the statement of Dennis, that he was one of the owners of the cargo, and presumes that Sixé was the other owner, this is competent evidence to prove title, since he was *their* agent as owners of ship and cargo, authorized to make whatever disposition of the property he saw fit, and must have known who owned the cargo.

Moreover, it was by Sixé's instructions that he destroyed the ship's papers before the capture. We say the ship's papers, because none were found on board, except the receipts; and, besides the strong probability that some ship's papers would have been prepared as evidence of title, destination, identity, and value of the cargo, and of the scheme of voyage, we have the express testimony of the master that he signed three bills of lading. Although the master says that what he threw overboard was "a mail

containing letters," yet the law will presume that they were papers which related to the ship and cargo, and will not accept the statement, much less any inference, that they were only private letters.—The Two Brothers, (1 Rob., 131.) The papers destroyed under Sixé's instructions were, therefore, the ship's papers, which would have explained the actual ownership of the cargo. The fact that they were destroyed by his orders proves that he had an interest in the cargo to which they related, and so corroborates the master's statement. And the well-settled rule of law, *in odium spoliatoris*, presumes that the papers were destroyed at his instance to suppress the evidence of his ownership of the ship and cargo. Certainly, if the cargo had been owned by a neutral Frenchman, resident at Bordeaux, it would have been the interest of all concerned in the voyage to show the fact, and, since the ship's papers should have shown it, their destruction at the instance of Sixé would have been most improbable.

The cargo, therefore, without doubt, was owned by the owners of the vessel, and was condemnable as enemy property.

2d. But however owned, the ship was clearly captured whilst violating the blockade of the Louisiana coast, and was, with her cargo, condemnable on that ground.

She left New Orleans, according to the master, (Record, p. 16,) four days before its capture by the United States forces, and when she was captured she was proceeding on the voyage then commenced. The blockade of that port was not then raised or relaxed, and there can be no question that, when captured, she was *in delicto* for that offence.

But, after she left New Orleans, the vessel lay for some months in one of the bayous, which form the secure retreats of rebel blockade-runners in southern Louisiana, where, by the admission of Queyrouze, *she was within the rebel lines and control.* She sailed out from those lines on the 27th of July, and was captured on the 28th, off the coast under a false flag, *on her way to Cuba.* The master says bound to some port in Cuba, and the mate says "bound to Havana."

At that time the coast of Louisiana and its ports were blockaded, all being in rebel possession and control, except the port of New Orleans. The limited and conditional cessation of the blockade of New Orleans, proclaimed by the President's proclamation of 12th May, 1862, did not and could not apply to any other port of Louisiana or to

any portion of the coast in rebel possession and control. That coast was, at the date of capture, in a state of actual and lawful blockade, and the Josephine was taken in the act of breaking that blockade.

No evidence is necessary to fasten on the Josephine knowledge of the blockade, since she was sailing from a blockaded port, and, as Justice Grier observes in the "Prize cases," (2 Black, 677,) it is a settled rule in the law of nations that a vessel in a blockaded port is presumed to have notice of the blockade as soon as it commences. But the claimant of this cargo must be charged with knowledge of the blockade, for he asserts (Record, p. 10) that at the time of capture the master of the Josephine was shaping his course for the blockading squadron. The offence was therefore complete.

In addition to its proved falsehood, the story of Queyrouze, that, at the time of capture, the Josephine was seeking the blockading squadron to get a license or permission to proceed on her intended voyage, is subject to the further infirmity that, even if it were true, it would not relieve her from the penalty of blockade-running.

No officer of the blockading squadron had any power to give such license or permission, and the law never accepts such an excuse from a vessel caught *in flagrante delicto*. It is of the class of excuses animadverted on by Sir Wm. Scott in The Spes and the Irene, (5 Rob., 77,) where vessels approach the mouth of a blockaded river, with pretence of making inquiry as to the blockade if they fall in with blockading vessels, but with intent to slip into port if they escape such vessels.

But the utter absurdity of the pretence set up by the claimant, of seeking the blockading squadron for a license, is proved not only by the master's contradiction of it in the statement that he was bound to Cuba, but by the facts that he was sailing under a false flag, and just before capture destroyed his papers. These acts, by the well-settled rules of law, stamp the voyage as fraudulent and sustain the allegation of the libel.

On both grounds, therefore, the decree condemning the cargo should be affirmed.

JAMES SPEED,
Attorney General.
TITIAN J. COFFEY,
Special Counsel for the United States.